

RECEIVED
CENTRAL FAX CENTER

JUN 08 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Kitsukawa)	Art Unit: 2614
)	
Serial No.: 09/802,638)	Examiner: Manning
)	
Filed: March 9, 2001)	50P4370
)	
For: SYSTEM AND METHOD FOR ALLOWING)	June 8, 2006
ACCESS TO WEB SITES USING INTERACTIVE)	750 B STREET, Suite 3120
TELEVISION)	San Diego, CA 92101
)	

REPLY BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This Reply Brief responds to the Examiner's Answer dated June 5, 2006. The Answer responds to Appellant's explanation of why there is no prior art suggestion to combine the parental lock flag of Stinebruner in the relied-upon table of Matthews with a misreading of Matthews. Specifically, the Answer cites lines 17-20 of Matthews' abstract and col. 5, lines 23-28 for the proposition that an EPG displays a program, when in fact these sections of Matthews simply teach that when a channel is selected, it is then displayed - but not that it is displayed in an EPG.

The Answer then attempts to salvage the *prima facie* case by presenting mere unsupported examiner argument about one skilled in the art wanting to prevent unauthorized access to web sites and therefore combining Breslauer with Matthews. The examiner still doesn't get it. Matthews links channels to services, including online shopping services, which, unlike web sites devoted to pornography or violence, do not

1168-9.RPL

CASE NO.: 50P4370
Serial No.: 09/802,638
June 8, 2006
Page 2

PATENT
Filed: March 9, 2001

implicate reasons for establishing parental controls. Thus, although paying superficial obeisance to the requirement for a prior art reason to combine as reflected in Jones and Fine (discussed at MPEP §2143.01), the Answer promptly ignores the gravamen of the case law.

The Answer descends into irrelevancy when it alleges that Appellant has "conceded" something about a reference that the Answer admits has not been used in the rejection under discussion. Thus, whether the Answer's characterization of a "concession" is correct is beside the point, because it is an allegation about a supposed concession having nothing to do with the references being applied in the rejection the Answer is attempting to defend.

Relative to the second issue related to telephone numbers, the Answer does not, because it cannot, rebut Appellant's point that Matthews never even mentions the word "telephone." Instead, it appears that the conferees (which include not one but *two* SPEs) believe that because Appellant's specification teaches that a channel number can be a telephone number, that fact, accompanied by an unsupported allegation cut out of whole cloth that the skilled artisan would recognize doing something that only the present specification has taught, is all they need to persuade the Board of the rectitude of the rejection.

Turning to the third issue, the Answer evidently argues that although Watson does not teach billing for virtual channel, there is nothing to prevent such use (according to the Answer) and therefore the skilled artisan "would have recognized" such use. This is an interesting approach to examination. In keeping with the principle announced in the Answer, since nothing would prevent using Watson to bill for online dog catching services, does this mean that Watson fairly suggests it?

Perhaps warming to the heady feeling of breaking new legal ground, in the next paragraph the conferees decide to go for broke, addressing their failure to satisfy the burden of proof regarding common

1168-9.RPL

CASE NO.: 50P4370
Serial No.: 09/802,638
June 8, 2006
Page 3

PATENT
Filed: March 9, 2001

knowledge by brazenly shifting onto Appellant a demand to prove otherwise. Unfortunately for the conferees, this cleverly novel approach to examination is not so new, inasmuch as the MPEP has already considered it and found it wanting, MPEP §2144.03(C) (titled in bold Italic "If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner *Must* Support the Finding with Adequate Evidence"). Furthermore, apart from whether Appellant has or has not challenged the use of common knowledge in a way that satisfies the examiner, the range of sources available does not diminish the requirement for **actual evidence**, and "broad conclusory statements... standing alone, are not evidence", In re Dembiczak, 175 F.3D 994, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999).

The Answer's response to the fourth ground of rejection descends into cognitive anarchy, citing three additional and previously uncited paragraphs of Linehan as teaching billing the user for public sources and billing an entity associated with the content provider if the source is private. In the spirit of cooperation, Appellant will address each new paragraph in turn.

Paragraph 38 teaches in relevant part that a satellite operator site determines whether to direct a user input to a web site or to a local processor. Paragraph 39 gives an example of how this works when the user input is sent to a web site. Neither paragraph mentions billing for anything. Paragraph 63 teaches billing a credit card based on a "capture request."


Accordingly, regardless of the propriety of regarding a secure web site to be a "private" site, left unexplained is where the claimed dichotomy in billing arises from the references. In fact, it appears that the conferees' position is that a secure web site in Linehan is a "private" site - but paragraph 63 teaches billing the user's credit card, the opposite of what is claimed. Plainly, Appellant's point here is strong, which is saying something in the context of such weak rejections.

1168-9.RPL

CASE NO.: 50P4370
Serial No.: 09/802,638
June 8, 2006
Page 4

PATENT
Filed: March 9, 2001

Respectfully submitted,



John L. Rogitz
Registration No. 33,549
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075

JLR:jg

1168-9.RPL